Appellate District, Division One, entered on the records of the California State Supreme Court, June 10, 1970; more particularly described in the annexed petition. Also, for such other and further relief as may be just and proper; to insure the application of the essentials of basic constitutional due process and equal protection during the adjudicatory step of a juvenile court action.

Paul F. Perati

Paul F. Perati

In Propria Persona.

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

PAUL F. PERATI,
Petitioner,
vs.
CALIFORNIA STATE SUPREME COURT,
Appellee.

PETITION FOR A WRIT OF CERTIORARI
TO THE
CALIFORNIA STATE SUPREME COURT

TO THE HONORABLE WARREN E. BURGER, CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT, and to THE HONORABLE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

Paul F. Perati, prays that a writ of certiorari issue to review the judgment of the California State Supreme Court, and in support thereof, requests consideration of the following:

JURISDICTION

The opinion of the California District Court of Appeal is appended, also see page 38, Certified Records. The judgment of the California Supreme Court affirmed the judgment of the District Court of Appeal, and is appended to this petition, also see page 39, Certified Record. The judgment and opinion have not been reported.

The California State Supreme Court rendered its judgment on June 10, 1970, and although not required, a notice of appeal and a request for a certified copy of the complete record was filed June 30, 1970, see page 40, Certified Record.

Jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1257 (3).

QUESTIONS PRESENTED FOR REVIEW

I.

DOES BASIC DUE PROCESS AND EQUAL PROTECTION REQUIRE THE RIGHT TO A JURY, TO DETERMINE THE FACTUAL QUESTIONS IN ISSUE, WHEN A JUVENILE COURT PROCEEDING MAY RESULT IN INCARCERATION IN AN INSTITUTION OF CONFINEMENT?

The Answer Must Be YES.

When charges of violations of criminal law are at issue, basic Americana has always cherished the right to have question of fact decided by a jury.

July 4, 1776, in the Declaration of Independence, clause 18, America declared to a candid world, that the King of Great Britain was depriving us, in many cases, of the benefit of trial by jury. The importance of trial by jury, to our Founding Fathers, is clear. In two places in our Constitution, provision is made for trial by jury: Article III, section 2, cl. 3; and the Sixth Amendment.

Our California Constitution is on all fours with the basic federal mandate. "The right of trial by jury shall be secured to all, and remain inviolate; *** ***" California Constitution, Article I, Section 7.

In re Gault, 387 U. S. 1 holds: (1)"*** When proceedings may result in incarceration in an institution of confinement, it would be extraordinary if our Constitution did not require the procedural regularity and exercise of care implied in the phrase 'due process'". Thus, Gault holds that basic federal constutional guarantees apply to state juvenile court proceedings where possible commitment to a state institution is present.

In Duncan vs Louisiana, 391 U. S. 491, it was held: (1) Trial by jury in criminal cases being fundamental to the American scheme of justice, the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which, were they to be tried in a federal court, would come within the Sixth Amendment's guaranty of

of a jury trial. (Thus, if this case were tried in a federal court, the Sixth Amendment would guaranty a jury trial).

Bloom v Illinois, 391 U. S. 194, appears to leave little doubt as to the basic right to a jury as stated in Duncan v Louisiana (supra).

IN Accordingly: Baldwin v New York State, U. S. Supreme Court File #2171 - June 1970.

An adult tried for the same violation in issue is entitled to have a jury decide the questions of fact involved. Thus, the denial of a jury to a minor in a juvenile court proceeding at the judicial step, after the probation officer has turned to the judicial branch of our government for help, is a clear violation of the minor's right to the EQUAL PROTECTION provision of the Fourteenth Amendment. "***; ***; nor shall any State deprive any person of life, liberty, or property; without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Fourteenth Amendment, United States Constitution.

II.

[A] MAY A LAY PERSON, NOT A MEMBER OF THE JUDICIAL BRANCH, CONFER JURISDICTION ON A SUPERIOR COURT, IN SESSION AS A JUVENILE COURT, TO PROCEED WITH THE TRIAL OF AN ALLEGED FELONIOUS OFFENSE, ON A HEARSAY PETITION, WITHOUT A VALID INDICTMENT OR INFORMATION, SHOWING THE RELIABILITY OF THE HEARSAY INFORMATION AND THE CREDIBILITY OF ITS SOURCE?

[B] IS THE LAYMAN PROBATION OFFICER, HOLDING MEMBERSHIP IN THE EXECUTIVE BRANCH OF OUR GOVERNMENT, FREE OF THE RULES THAT BIND A DISTRICT ATTORNEY IN PROCESSING AN INDICTMENT OR INFORMATION, WHEN THE LAY PERSON DECIDES HE WILL LEAVE THE PRE-JUDICIAL STEP AND SEEK A JUDICIAL DECISION; THUS ENGAGING IN THE PRACTICE OF LAW?

The Answer to both [A] and [B] must be NO.

The powers of the Government of the State of California shall be divided into three (3) separate

departments: The Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this constitution expressly directed or permitted. California Constitution, Article III, sec. I.

Our California Constitution is a limitation on power (not a grant of power, as is the U. S. Constitution). Thus, a layman member of the Executive Branch is without power to draft and prepare legal papers and pleadings in a court of justice, or to determine legal questions that will affect and be relied upon by others in the course of legal proceedings. To hold contra, just because a juvenile is involved, is to deny the public the safeguards they have a right to expect, and to deny the juvenile the exercise of care and fairness implied in due process and equal protection of the law, and Gault is again violated.

(2) Indictment and Information - Necessity For. A court has no jurisdiction to proceed with the trial of an offense without a valid indictment or information. California Constitution, Article I section 8. Penal Code, sec. 682.

(3) Prohibition-Grounds - Excess of jurisdiction - Prohibition is the proper remedy to prevent threatened action in excess of jurisdiction.

(6) An information that is based entirely on hearsay or incompetent evidence is unauthorized. Rodgers vs Superior Court, 46 Cal. Reports, 2nd, 5.

(4) While the district attorney is permitted to charge a defendant with a criminal offense, it must appear that the district attorney makes the charge and likewise, while a grand jury is authorized to accuse one with the commission of an offense, it must appear upon the indictment that the accusation is by the grand jury, and not by someone else or some other body of people, xxx xxx. People v Hill, 2 Cal.App. Reports 2nd 141.

(2a) (2b) Penal Code, sections 806, 813 and 952, relating to complaints and warrants, meet the constitutional test when read and construed together in light of Giordenello vs United States (1958), 357 U.S. 480, and Agualar v Texas, (1964) 378 U.S. 108 (12 L. Ed. 2nd 723; 84 S. Ct. 1509, which formulates the requirements of the United States Constitution, Fourth Amendment, for valid arrest and search warrants and which with Jaben v United States (1965), 381 U. S. 214 (14 L. Ed. 2d 345; 85 S. Ct. 1365), provide the standards applicable to the states through U. S. Constitution, 14th Amendment.

(3a & 3b) Under Penal Code sections 806, 813, and 952, a complaint based on "information and belief" and couched in the statutory language of the alleged offense may support a valid arrest warrant, if the complaint alleges sufficient facts for the magistrate to conclude that probable cause supports the warrant in that the allegations indicate (1) the commission of the crime by the person whose arrest is sought, and (2) the re-

liability of the information and credibility of its source. Absent such allegations, the warrant fails and an arrest made pursuant to it is illegal. People v. Sesslin, 68 Cal. Reports 2nd 418, 419.

The petition or accusatory pleading (page 34, CERTIFIED RECORD) of Mr. Carter and Mr. Callahan, who are members of the Executive Branch of the Government, is an attempt to exercise powers properly belonging to the Judicial Branch. This accusatory pleading not having been screened by a member of the judicial department, and now showing the reliability of the information and the credibility of its source, cannot confer jurisdiction to require a party to answer in a court of law, and is outside the regularity and care required by Gault, and clearly prejudices the substantial rights of the parties defendant.

MEMO OF PERSUASIVE POINTS AND AUTHORITIES

	Page
California Health and Safety Code, Section 11531, see appendix.	11
California, Welfare & Institutions Code, Section 602	11
California Constitution, Article LLI, sec. I. Verbatim on pages 5 & 6.	6
California Constitution, Article I, Section 7. " The Right of trial by jury shall be secured to all, and remain inviolate; ****,***.	3
United States Constitution, 14th Amd., Section 1. ** ***, ***; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.	4
IN RE GAULT, 387 U.S. 1 , (1) ***,**. When proceedings may result in incarceration in an institution of confinement, it would be extraordinary if our Constitution did not require the procedural regularity and exercise of care implied in the phrase " due process".	6

STATEMENT OF THE CASE

Petitioner was informed and believes, and alleges that his daughter was taken into custody at the age of 14 years, on December 15, 1969, on private property, without a warrant or probable cause, for two alleged violations of Section 11531 of the Health and Safety Code of California (sale of marijuana, section set out in appendix), alleged to have been made on or about December 9, 1969.

That on January 22, 1970, Mr. Michael J. Carter, a probation officer, did execute a petition on information and belief, page 34, CERTIFIED RECORD, of two alleged violations of the above cited Health and Safety Code, without any indication of the reliability of his information, or the credibility of its source, and without an accusation by the grand jury, the district attorney, or any judicial officer. This petition (page 34, CERTIFIED RECORD) contains the conclusion of the pleader that the juvenile comes within the provisions of Section 602, of the Juvenile Court Law of the State of California.

Section 602. "Minors violating laws, defining crimes; minors failing to obey court order. Any person under the age of 21 years, who violates any law of this State or of the United States or any ordinance of any city or county of this State defining crime or who, after having been found by the juvenile court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court."

As these proceedings could result in incarceration in an institution (pages 22 & 26, CERTIFIED RECORD), the care and protection of Gault is needed.

Your petitioner herein as a real party in interest (CERTIFIED RECORD, page 24, lines 10, 11, & 12) under California law, did challenge the jurisdiction of the Superior Court and raised the federal questions to be reviewed in the following manner:

The request for a jury trial was raised by oral motion as soon as the Court was in session

L.

on February 19, 1970 (CERTIFIED RECORD, page 16) and was denied by the Superior Court, same record and page.

The request for a jury trial was raised in the District Court of Appeal by a Motion for a Peremptory Writ of Prohibition (see page 5, CERTIFIED RECORD). The judgment of the District Court of Appeal, left this important question open, (see page 38, CERTIFIED RECORD, and appendix).

The request for a jury trial was raised in the California State Supreme Court by a Petition For Hearing (see pages 5 & 6, Petition For Hearing). The judgment of the California State Supreme Court rendered on June 10, 1970, denied the Petition, thus affirming the judgment of the California State District Court of Appeal, (see page 39, CERTIFIED RECORD, and appendix).

The question of jurisdiction in the fundamental sense: "May a layman, not a member of the judicial branch, confer jurisdiction on a Superior Court in session as a juvenile court, to proceed

with the trial of an alleged offense on a hearsay petition, without a valid indictment or information, showing the reliability of the hearsay information and the credibility of its source?"

This question was first raised in the Superior Court on February 20, 1970, by a verified petition to dismiss. See pages 29 thru 32, Certified Record. This was denied by the Superior Court, see pages 17, 18, CERTIFIED RECORD.

This question was raised in the District Court of Appeal by the motion for a Peremptory Writ of Prohibition, filed March 18, 1970. See page 4 CERTIFIED RECORD. The judgment of the District Court of Appeal (page 38 CERTIFIED RECORD) left this open for the time.

This question was raised in the California State Supreme Court by a Petition For Hearing (see pages 8, 9 & 10, Petition For Hearing in the California State Supreme Court). The judgment of the California Supreme Court affirmed the judgment of the District Court of Appeal, and was entered on June 10, 1970. (See page 39, CERTIFIED RECORD).

Your petitioner filed a request for a certified copy of the complete record, and gave notice of appeal by way of a petition for a writ of certiorari, on June 30, 1970 (see page 40, CERTIFIED RECORD).

ARGUMENT

It is respectfully submitted, the federal questions in issue are fundamental and basic Constitutional questions and have not been decided in conformity with decisions of this Court. Duncan, Bloom and Baldwin vs. New York, all clearly show recognition of the importance of allowing questions of fact to be decided by a jury when the elements of criminal statutes are in issue.

When a person is in jeopardy of being stigmatized by a conviction of a violation of criminal law, with the possibility of institutional confinement, the Sixth Amendment must, to insure the regularity and care provided by due process, as mentioned in Gault, be applied to the States through the Fourteenth Amendment. And in California, where the State Constitution holds a right to a jury shall be secured to all, and remain inviolate, equal protection should not be denied a juvenile, when an

adult has a right to have a jury decide the same questions of fact in issue.

Important legal questions to insure due process, should be determined by a district attorney or magistrate, before a juvenile is required to answer a criminal type accusation. To allow a layman to confer jurisdiction on a Superior Court for an alleged offense, on hearsay, without a valid indictment or information or screening by a magistrate or district attorney, without a showing of the reliability of his information and the credibility of its source, requires one to answer without a showing of probable cause. This clearly violates basic due process, equal protection, and breaches the separation of the Executive and Judicial branches of government.

Applying these basic constitutional provisions will have no bearing on the

pre-adjudicatory step or the disposal Hearing; but will insure regularity and fairness, once the probation officer decides to leave the pre-adjudicatory area and turn to the judicial department for help with his problem.

Therefore, your petitioner prays that a writ of certiorari issue to review the judgment of the California State Supreme Court, that a hearing be granted in the California State Supreme Court under guidelines established by this United States Supreme Court; costs of suit herein, and such other relief as is proper.

Respectfully submitted,

Paul F. Perati

Paul F. Perati
In propria persona

Executed under penalty of perjury, on this 8th day of July, 1970, in Oakland, California.

Paul F. Perati

MEMORANDUM OF SERVICE

All parties required to be served have been served:

Honorable Thomas C. Lynch, Attorney General of the State of California;

Honorable Donald R. Wright, Chief Justice, California State Supreme Court;

Office of the Clerk, California District Court of Appeal;

Honorable Wm. H. Brailsford, Presiding Judge, Alameda County Superior Court;

Mr. G. Wright Morton, Esquire, Deputy District Attorney, Alameda County; and

Mr. William Kesseler, Esquire, Assistant Public Defender, Alameda County.

Service by U.S. mail, first class postage prepaid.

See cover letter.

Section 11531, California Health and Safety Code.

Transp ortation, impor tation, sale, etc., of marijuana:

Every person who transports, imports into this State, sells, furnishes, administers or gives away, or offers to transport, import into this State, sell, furnish, administer, or give away, or attempts to import into this State or transport any marijuana shall be punished by imprisonment (1) in the state prison from five years to life and shall not be eligible for release upon completion of sentenc e, or on parole, or on any other basis until he has served not less than three years.

If such a person has been previously convicted once of any felony offense described in this division or has been previously convicted once of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as (2) a felony offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in a state prison from (3) five years to life, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison.

If such a person has been previously convicted two or more times of any felony offense described in this division or has been previously convicted two or more times of any offense under the laws of any other state or of the United States which

if committed in this State would have been punishable as a felony offense described in this division, the previous convictions shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted to by the defendant, he shall be imprisoned in a state prison from 10 years to life and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than 10 years in prison.

Court of Appeal of the State of California

IN AND FOR THE

First Appellate District

Division ONE

FILED

In the Matter of Margaret Perati and Paul F. Perati,
Petitioner,

vs.

Superior Court, County of Alameda,
Respondent.

No. 27995

BY THE COURT:

The United States Supreme Court having ruled in the case of In re Winship, decided March 31, 1970, that a conviction of a minor in a juvenile court proceeding must be based upon proof of guilt beyond reasonable doubt, and there being no reason to believe that standard will not be applied in the juvenile proceeding to which this petition relates, the petition for a writ of prohibition is denied.

Dated .....

..... P.J.

1ST CIV. No. 27995

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

FILED

MAY 18 1970
WILLIAM I. SULLIVAN, Clerk
By _____ A. P. Deputy

PERATI

V.

SUPERIOR COURT OF THE COUNTY OF ALAMEDA

The time for granting or denying a hearing in the above cause is hereby extended to and including JUNE 23, 1970.

Wright
Chief Justice

16894-877 12-67 1M OSP

June 23, 1970

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

1st District, Division 1, Civil No. 27995

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

FILED

JUN 10 1970

WILLIAM J. SULLIVAN, Clerk

By [illegible], Deputy

PERATI

v.

THE SUPERIOR COURT OF THE COUNTY OF ALAMEDA

Petition for hearing DENIED.

Burke

Chief Justice

I, WILLIAM J. SULLIVAN, Clerk of the [illegible] of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 1st day of July A.D. 1970

WILLIAM J. SULLIVAN, Clerk

By [illegible], Deputy Clerk

36289-877 10-68 3M-EMP OSP

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OCT 30 1970
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 377

PAUL F. PERATI,
Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ALAMEDA,
Respondent.

Opposition to Petition for Writ of Certiorari

THOMAS C. LYNCH
Attorney General of the State of California
ALBERT W. HARRIS, JR.
Assistant Attorney General
DERALD E. GRANBERG
Deputy Attorney General
GLORIA F. DEHART
Deputy Attorney General
6000 State Building
San Francisco, California 94102
Telephone 557-0799
Attorneys for Respondent

SORG PRINTING COMPANY OF CALIFORNIA: 346 FIRST STREET, SAN FRANCISCO 94105

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